

## Sanctions Update: US Targets Russia's Energy Sector, Announces New Trade Restrictions, and Issues New Sanctions Designations

***New sanctions prohibit Russian energy product imports, investments in Russia's energy sector, and dealings with dozens more Russia-related parties, and impose broader trade restrictions.***

This *Client Alert* is published in the context of fast-moving developments. Significant additional sanctions measures may be introduced in the coming days, which will form the subject of future *Client Alerts*.

On March 8, 2022, President Biden signed [Executive Order 14066](#) (the March 8 Order), imposing the latest in a series of escalations in Ukraine- and Russia-related sanctions and stringent export control measures following Russia's invasion of Ukraine, previously described in Latham's *Client Alerts* from [February 25](#) and [March 1](#). The US further enhanced trade restrictions with respect to Russia on March 11, 2022, with President Biden issuing a new [Executive Order](#) (the March 11 Order) imposing additional prohibitions on imports, exports, and new investment involving Russia.

The March 8 and March 11 Orders follow additional designations on March 3 by the US Treasury Department's Office of Foreign Assets Control (OFAC), targeting Russian elites and key allies of Russian President Vladimir Putin, and additions to the Entity List by the US Department of Commerce's Bureau of Industry and Security (BIS).

The March 8 Order prohibits:

- The importation into the United States of the following products of Russian Federation origin: crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products; and
- "New investment" in the energy sector in the Russian Federation by a US person (i.e., US citizen, US permanent resident, entities organized under US law and their foreign branches, as well as anyone physically present in the US).

OFAC also released a new general license and several new and amended FAQs in connection with the March 8 Order, which are introduced further below.

The March 11 Order:

- Prohibits the importation into the United States of certain Russian-origin food products and non-industrial diamonds;
- Establishes a broad export and reexport ban on luxury goods to Russia;
- Establishes the possibility of a broader “new investment” ban beyond the ban in the March 8 Order; and
- Prohibits the transfer of US dollar-denominated banknotes to the government of the Russian Federation or persons located in Russia.

The March 8 and March 11 Orders also prohibit:

- Approval, financing, facilitation, or guarantee by a US person of a transaction by a foreign person if the transaction by that foreign person would be prohibited by each of the Orders if performed by a US person or within the United States; and
- Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions of the Orders.

## **Ban on Importation of Russian-Origin Oil, Gas, and Coal**

The Russia-related sanctions previously imposed by the US — in coordination with the EU, the UK, and other allies — avoided, with certain exceptions, targeting the Russian energy sector. The March 8 Order departs from that approach, first by banning the importation into the United States of oil, liquefied natural gas, and coal of “Russian Federation origin.”

Soon after issuance of the March 8 Order, OFAC published [FAQ 1019](#), defining “Russian Federation origin” goods as “goods produced, manufactured, extracted, or processed in the Russian Federation, excluding any Russian Federation origin good that has been incorporated or substantially transformed into a foreign-made product.” In a previous sanctions program relating to Burma, OFAC measured “substantial transformation” according to US Customs rules of origin.

In connection with the March 8 Order, OFAC published a new general license, [General License No. 16](#), which provides a limited wind-down period authorizing transactions “ordinarily incident and necessary” to the importation into the United States of certain oil, gas, and coal products of Russian Federation origin “pursuant to written contracts or written agreements entered prior to March 8, 2022” until April 22, 2022.

OFAC’s [FAQ 1014](#) clarifies that only the products listed above are subject to the import ban, and that the March 8 Order “does not prohibit imports of non-Russian Federation origin, even if such items transit through or depart from the Russian Federation.” [FAQ 1016](#) explains that the March 8 Order does not prohibit US persons from engaging in transactions to sell or re-direct shipments that were previously destined for the United States prior to the issuance of the March 8 Order. In addition, per [FAQ 1018](#), the March 8 Order does not expose non-US persons to sanctions to the extent they import affected products outside of the United States in transactions that do not involve a sanctioned person (and are not otherwise prohibited).

## **Ban on New Investment in the Energy Sector “in the Russian Federation”**

The March 8 Order prohibits new investment in the energy sector in the Russian Federation by a US person, wherever located. [FAQ 1019](#) defines the term “new investment” to include “a commitment or contribution of funds or other assets for, or a loan or other extension of credit to, new energy sector activities (not including maintenance or repair) located or occurring in the Russian Federation beginning on or after March 8, 2022.”

Pursuant to the March 8 Order, US persons are also prohibited from approving, financing, facilitating, or guaranteeing any investments in Russia’s energy sector by non-US persons.

The March 8 Order’s ban on new investments raises a number of questions. The March 8 Order leaves unclear, for example, how to distinguish between “new” and preexisting energy sector activities. The March 8 Order is also ambiguous as to whether supplying goods to an energy project in Russia constitutes a prohibited “contribution of...assets.” Given the significant uncertainty, OFAC is likely to provide additional guidance in the coming days.

## **Additional Bans on Certain Imports, Exports, and New Investment Involving Russia**

The March 11 Order further enhances the trade restrictions the US has placed on Russia in recent weeks by prohibiting:

- The importation into the United States of fish, seafood, alcoholic beverages, and non-industrial diamonds, and certain related items, of Russian Federation origin;
- The exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a US person, of luxury goods to any person located in the Russian Federation;
- New investment by a US person in any sector of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State; and
- The exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a US person, of US dollar-denominated banknotes to the government of the Russian Federation or any person located in the Russian Federation.

Notably, the March 11 Order authorizes the Secretary of the Treasury to impose additional bans on new investment in the Russian Federation, beyond those imposed on the Russian energy sector by the March 8 Order. Any such bans will likely raise the same questions as those noted above with respect to the ban on new investment in the Russian energy sector.

Concurrent with the publication of the March 11 Order, BIS [announced](#) parallel export control restrictions on the export, reexport, and transfer of luxury goods to Russia and Belarus and to certain Russian and Belarusian oligarchs and malign actors located worldwide.

The EU has also announced that it will introduce further sanctions. On March 11, 2022, EU President Ursula von der Leyen announced that these sanctions would include a ban on the export of EU luxury goods from the EU to Russia.

## New General Licenses Relating to the Central Bank of Russia

On February 28, 2022, OFAC issued [Directive 4](#) under Executive Order 14024, which prohibits US persons from engaging in any transactions involving Russia's Central Bank, National Wealth Fund, or Ministry of Finance. The broad language under this Directive created uncertainty and concern about the incidental role of the Central Bank of Russia in otherwise permissible financial transactions.

On March 2, 2022, OFAC released additional general licenses relating to certain dealings with Russia's Central Bank, National Wealth Fund, and Ministry of Finance in response to these concerns. [General License 13](#) allows the payment of taxes, fees, and import duties, and the purchase and receipt of permits, licenses, registrations, or certifications by US persons to the extent such transactions are prohibited by Directive 4, provided such transactions are ordinarily incident and necessary to such persons' day-to-day operations in Russia, through 12:01 a.m. EDT June 24, 2022. [General License 14](#) allows transactions involving Russia's Central Bank, National Wealth Fund, or the Ministry of Finance if those entities' sole function in the transaction is to act as an operator of a clearing and settlement system.

## New SDN and Entity List Designations

On March 3, 2022, OFAC [announced](#) that it added to its Specially Designated Nationals and Blocked Persons (SDN) List 47 individuals, 42 entities, one vessel, and two aircraft. According to OFAC, these designations target Russian "elites" that "provide direct and indirect support to the Government of the Russian Federation...through their business empires, wealth, and other resources," as well as individuals and entities linked to Russian "efforts to promulgate disinformation and influence perceptions."

Pursuant to OFAC's so-called "50 percent rule," entities that are owned 50% or more, by one or more sanctioned parties, should also be treated as subject to the same sanctions, even if those parties are not identified on the applicable sanctions list. Most dealings by US persons with SDNs are prohibited unless licensed, and US persons are obligated to block property and interests in property of an SDN that is within a US person's possession or control. Certain significant dealings with SDNs can also expose non-US parties to so-called "secondary sanctions."

Also effective March 3, BIS [added](#) 91 new entities to the Entity List under the destinations of Belize, Estonia, Kazakhstan, Latvia, Malta, Russia, Singapore, Slovakia, Spain, and the United Kingdom. BIS explained that the entities have been involved in, contributed to, or otherwise supported the Russian security services, military and defense sectors, and military and/or defense research and development efforts. As a result of these Entity List designations, no person (US or non-US) may export, reexport, or transfer in-country any items regulated under the [Export Administration Regulations](#) (EAR) to the designated parties, absent authorization from BIS. EAR-regulated items (or items "subject to the EAR") include all items in the United States, all US-origin items (wherever located), and certain foreign-made items that contain more than a *de minimis* amount of controlled US-origin content. Importantly, these export and transfer restrictions apply even to "low tech" items classified as EAR99 (the least restrictive export classification under the EAR). License applications to BIS will be subject to a "policy of denial" — meaning, as a practical matter, that BIS will deny as a matter of course any license applications requesting authorization to provide items subject to the EAR to the new Entity List parties.

Finally, the UK and the EU have included numerous additions in their respective asset-freeze lists. Notably, on March 10, the UK designated for purposes of the [UK asset-freeze list](#) Roman Abramovich and Oleg Deripaska. To the extent UK jurisdiction applies, subject to certain exceptions and authorizations, including as provided in General Licenses, funds and economic individuals belonging to or owned, held, or controlled by designated persons are frozen, and persons subject to UK jurisdiction are

prohibited from making funds or economic resources available, whether directly or indirectly, to or for the benefit of a designated person, including to a legal entity that is majority owned or controlled, directly or indirectly, by a designated person. For more details regarding UK and EU sanctions please refer to Latham's *Client Alert* from [March 8](#).

Latham & Watkins is tracking developments across all regions closely and expects that the US, the EU, the UK, and other governments around the world may impose additional rounds of sanctions as events unfold. The firm is well positioned to advise clients on the legal and practical impacts of these measures.

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